C.S. 2052 (1) Single Bench (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 226 2005

PETITIONERS.

1. Suraj Bhan Sinha S/o Shri Devdhar Sinha aged about 35 years, Resident of Village-Chicha Post-Gabdi Tahsil - Gunderdehi, Dist.-Durg (C.G.)
2. Smt. Keshar Bai W/o Shri Tuleshwar Prasad Sahu aged about 35 years, Resident of Village-Chicha Post-Gabdi Tahsil-Gunderdehi Dist. Durg (C.G.)

P.R. No. 731/05 S.R.Sahu
Presented by
dated 22/04/05

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through Secretary Panchyat Depart. D.K.S.Bhawan Raipur {C.G.}
2. The director of the Panchyat Department D.K.S. Bhawan, Raipur Dist. Raipur (C.G.)
3. The Collector/District Election Officer (Panchyat) Durg, Dist.-Durg (C.G.)
4. The Tahsildar/Returning officer (Panchyat) tahsil-Gunderdehi Dist. Durg (C.G.)
5. Smt. Somlata Sahu, W/o Srhi Romlal Sahu, Sarpanch of Gram Panchyat Chicha, Post Gabdi, Tahsil-Gunderdehi, Dist- Durg (C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE COUNSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CEERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERES:

The petitioners above-named most respectfully submit as under:-

1. PARTICULARS OF THE PETITIONERS:

As mentioned in the cause title above.

2. PARTICULARS OF THE RESPONDENTS:

As mentioned in the cause title above.

AFR (94)

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 726 of 2005

Petitioners : Suraj Bhan Sinha and another

- Versus-

Respondents : State of Chhattisgarh & others

ORDER

Post for 20-2-2007

Sd/-
Satish K. Agnihotri
Judge

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 726 of 2005

Petitioners	:	Suraj Bhan Sinha and another
		- Versus-
Respondents	:	State of Chhattisgarh & others

Shri R.S. Patel, Advocate for the petitioner.

Shri Utkarsh Verma, Dy. Govt. Advocate for the respondents No. 1 to 4/State.

Shri Yashwant Singh, Advocate for the respondent No. 5.

ORDER

(Passed on 20th Day of February, 2007)

This order of the Court is passed by Justice Satish K. Agnihotri.

1. By this petition, the petitioner impugns the order dated 18.11.2004 (P/8), whereby the revision filed by the respondent No. 5 against the order dated 16.10.2002 (P/4), passed by the Sub Divisional Officer, Patan, District Durg in Case No. 43/A-89/02-03 and the order dated 31.1.2003 (P/5), passed by the Collector, Durg in Case No. 3/A-89/2002-2003, was partly allowed.

2. The indisputable facts in nutshell are that the petitioners are some of the complainants against the respondent No. 5, who is elected Sarpanch of Village Panchayat Chicha. According to the petitioners, the respondent No. 5 in the capacity of the Sarpanch had committed serious irregularities causing financial loss to the Gram Panchayat. On the basis of allegations made

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by the petitioners, the Sub-Divisional Officer conducted the enquiry and after having considered the case on the basis of oral evidences adduced and documents produced before him held that the alleged serious irregularities committed by the respondent No. 5 were found proved. Thus, the Sub-Divisional Officer in exercise of his power under Section 40 (1) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993') removed the respondent No. 5 from the office of the Sarpanch, Gram Panchayat-Chicha, Block-Gunderdehi vide order dated 16.10.2002 (P/4) with immediate effect. Further, in exercise of his power under sub section 2 of Section 40 of the Adhiniyam, 1993 declared the respondent No. 5 as disqualified for a period of 6 years. It was further held that the Secretary was also responsible for the alleged serious irregularities committed by the respondent No. 5 as Sarpanch of Gram Panchayat-Chicha. Thus, appropriate action be initiated against him.

3. Being aggrieved, the petitioner preferred an appeal, being Case 3/A-89/2002-2003, under Section 91 of the Adhiniyam, 1993 before the Collector, Durg. The Collector, Durg after having heard both the parties and having considered the enquiry report and other facts of the case came to the conclusion that the order passed by the Sub-Divisional Officer needed no interference. Thus, by the order dated 31.1.2003 (P/5), the Collector, Durg confirmed the order dated 16.10.2002, passed by the Sub-Divisional Officer.

4. Being aggrieved, the respondent No. 5 preferred a revision, being Revision No. 284/A-89/03-04 (Commissioner, Raipur Case No. 27/A-89/02-03) before the Director (Panchayat), Chhattisgarh, Raipur. The Director (Panchayat), by the order dated 18.11.2004 (P/8), held that in the enquiry report dated 28.6.2002 several charges alleged against the respondent No. 5 were not found proved. The Sub-Divisional Officer, on the basis of statements of witnesses and documents, removed the respondent No. 5 from the post of the Sarpanch and declared her disqualified for a period of 6 years. The Appellate Authority, i.e. Collector, Durg confirmed the order passed by the Sub-Divisional Officer. Accordingly, the Director partly allowed the revision holding that the order of removal, passed by the Sub-Divisional Officer, confirmed by the Collector was proper, but their order disqualifying the respondent No. 5 for a period of 6 years was set-aside.

5. On perusal, it appears that the petitioner was not heard and the Director (Panchayat) proceeded ex-parte, though it is clearly mentioned that despite notice, the petitioner did not appear, nor did he file any reply or submission. The Director partly allowed the revision to the extent that the order of removal of the respondent No. 5 was perfectly valid and just. Further, the second part of the order i.e. disqualifying her for a period of 6 years under Section 40 (2) of the Adhiniyam, 1993 was quashed and set-aside. The Director has not assigned reasons while modifying the orders passed by the Sub-Divisional Officer, confirmed by the Collector with regard to disqualification for a

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period of 6 years. It appears that the proper opportunity of hearing was not given to the petitioner. This is also a case of the petitioner that the impugned order was passed without affording an opportunity of hearing to the petitioner.

6. Thus, interest of justice would be subserved if the matter is remitted back to the Director to decide the case after affording opportunity of hearing to the petitioner, in accordance with law.

7. The writ petition is accordingly allowed. The impugned order dated 18.11.2004 (P/8), passed by the Director (Panchayat), Chhattisgarh, Raipur in Revision No. 284/A-89/03-04 (Commissioner, Raipur Case No. 27/A-89/02-03) is quashed to the extent of setting aside the order of disqualification for 6 years, imposed on the respondent No.5, passed by the Sub Divisional Officer and confirmed by the Collector. The matter is remitted back to the Director (Panchayat), Chhattisgarh, Raipur for decision on the question asto whether the order of the Sub-Divisional Officer, confirmed by the Collector, declaring the respondent No. 5 as disqualified for a period of 6 years was valid and in accordance with law after hearing both the parties, within a period of 3 months from the date of receipt of a copy of this order. It is ordered accordingly. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge